by general partners with a majority interest) or (f) of this section (designation by partners with a majority interest under certain circumstances), thereby avoiding a selection made by the Commissioner.

(ii) During the 30-day period and prior to a tax-matters-partner designation by the partnership, the Commissioner will communicate with the partnership by sending all correspondence or notices to ''*The Tax Matters Partner*'' in care of the partnership at the partnership's address.

(iii) Any subsequent designation of a tax matters partner by the partnership after the 30-day period will become effective as provided under paragraph (k)(2) of this section (concerning designations made after a notice of beginning of administrative proceeding is mailed).

(s) *Effective date.* This section applies to all designations, selections, and terminations of a tax matters partner occurring on or after the date final regulations are published in the Federal Register.

Par. 3. Section 301.6231(a)(7)–2 is added to read as follows:

§ 301.6231(a)(7)–2 Designation or selection of tax matters partner for a limited liability company (LLC).

(a) *In general.* Solely for purposes of applying section 6231(a)(7) and § 301.6231(a)(7)–1 to an LLC, only a member-manager of an LLC is treated as a general partner, and a member of an LLC who is not a member-manager is treated as a partner other than a general partner.

(b) *Definitions*—(1) *LLC.* Solely for purposes of this section, *LLC* means an organization:

(i) Formed under a law that allows the limitation of the liability of all members for the organization's debts and other obligations within the meaning of § 301.7701–2(d); and

(ii) Classified as a partnership for Federal tax purposes.

(2) *Member.* Solely for purposes of this section, member means any person who owns an interest in an LLC.

(3) *Member-manager.* Solely for purposes of this section, *member-manager* means a member of an LLC who, alone or together with others, is vested with the continuing exclusive authority to make the management decisions necessary to conduct the business for which the organization was formed. Generally, an LLC statute may permit the LLC to choose management by one or more managers (whether or not members) or by all of the members. If there are no elected or designated member-managers (as so defined in this paragraph (b)(3)) of the LLC, each member will be treated as a member-manager for purposes of this section.

(c) *Effective date.* This section applies to all designations, selections, and terminations of a tax matters partner of an LLC occurring on or after the date final regulations are published in the Federal Register. Any other reasonable designation or selection of a tax matters partner of an LLC is binding for periods prior to the effective date of this section.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–26738 Filed 10–27–95; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH83–1–6991b; AD–FRL–5299–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Ohio to correct its Rule 3745–35–07 that underlies its federally enforceable State operating permits (FESOP) program. The USEPA proposes further to conclude that Ohio has satisfied the condition established in USEPA's conditional approval of Ohio's FESOP program, as published on October 25, 1994, at 59 FR 53586. In the Final Rules section of this Federal Register, USEPA is fully approving the State's SIP revision as a direct final rule without prior proposal, because the USEPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to these actions, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before November 29, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of its are available for inspection at: Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section for this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 5, 1995.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 95–26590 Filed 10–27–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 70

[AD–FRL–5321–9]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by Maryland. This program was submitted by Maryland for the purpose of complying with federal requirements which mandated that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by November 29, 1995.

ADDRESSES: Comments should be addressed to Enid Gerena, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of Maryland's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and

Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Enid A. Gerena (3AT23), Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–8239.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

As required under Title V of the Clean Air Act (CAA) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70 and require states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources. Due to pending litigation over several aspects of the Part 70 rule which was promulgated on July 21, 1992, Part 70 is in the process of being revised. When the final revisions to Part 70 are promulgated, the requirements of the revised Part 70 will define EPA's criteria for the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits program submittals. Until the date which the revisions to Part 70 are promulgated, the currently effective July 21, 1992 version of Part 70 shall be used as the basis for EPA review.

B. Federal Oversight and Sanctions

The CAA requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the CAA and the July 21, 1992 version of Part 70, which together outline the currently applicable criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, EPA must establish and implement a federal operating permits program.

Following final interim approval, if the State of Maryland fails to submit a complete corrective program for full approval by 6 months before the interim approval expires, EPA would start an 18-month clock for mandatory sanctions. If Maryland then failed to submit a complete corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the CAA. Such sanction would remain in effect until EPA determined that Maryland had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of Maryland, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that Maryland had come into compliance. In any case, if, six months after application of the first sanction, Maryland still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA disapproved Maryland's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Maryland had submitted a revised program and EPA had determined that this program corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of Maryland, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that Maryland had come into compliance. In all cases, if, six months after EPA applied the first sanction, Maryland had not submitted a revised program that EPA had determined corrected the deficiencies that prompted the disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Maryland has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a Maryland program by the expiration of an interim approval period, EPA must promulgate, administer and enforce a federal operating permits program for Maryland upon the date the interim approval period expires.

C. State of Maryland's Submittal

On May 9, 1995, Maryland submitted an operating permits program for review by EPA. The submittal was supplemented by additional materials on June 9, 1995, and was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). The submittal includes the following components: transmittal letter; description of Maryland's Title V operating permits program; state regulations; Attorney General's legal opinion; workload analysis, permit fee demonstration; permitting program documentation, and additional information (i.e., transition plan, data management, compliance tracking and enforcement description).

II. Summary and Analysis of Maryland's Submittal

The analysis contained in this notice focuses on the major portions of Maryland's operating permits program submittal: regulations and program implementation, fees, support materials, and provisions implementing the requirements of Titles III and IV of the CAA. Specifically, this notice addresses the deficiencies in Maryland's submittal which will need to be corrected to fully meet the requirements of the July 21, 1992 version of Part 70. These deficiencies as well as other issues related to Maryland's operating permits program are discussed in detail in the Technical Support Document (TSD). The full program submittal and the TSD are available for review as part of the public docket. The docket may be viewed during regular business hours at the EPA Region III office listed in the **ADDRESSES** section of this notice.

A. Regulations and Program Implementation

Maryland's operating permits program is primarily defined by regulations adopted as Code of Maryland Regulations (COMAR), Title 26, Subtitle 11. The specific regulations being adopted to implement the Part 70 requirements will appear at COMAR § 26.11.02 (Permits, Approvals, and Registration) and COMAR § 26.11.03 (Permits, Approvals, and Registration—Part 70 Permits). Provisions for enforcement authority are located in COMAR § 26.11.02.05. Maryland submitted a list identifying ''Title V'' and ''Non-Title V'' provisions of its regulations. This list is provided in the TSD. In today's proposal, EPA is taking action only on the Title V portions of Maryland's submittal.

During the review of Maryland's regulations, EPA identified several instances of vague language, misreferences, typographical errors, and errors of omission in the regulatory language. The provisions in which these errors occur are identified in the TSD and must be interpreted as if written correctly to fully meet the requirements of Part 70. The following analysis of Maryland's operating permit regulations corresponds directly with the format and structure of Part 70.

Section 70.4 State Program Submittals and Transition

Maryland's regulations substantially meet the requirements of 40 CFR 70.4 for the State program submittal. For consistency with section 502(b)(6) of the Clean Air Act and 40 CFR 70.4(b)(3)(x), Maryland must address the following issue on standing for judicial review and the following changes must be made in order to fully meet the requirements of 40 CFR 70.4:

1. The Attorney General of Maryland, in his opinion dated June 9, 1995, states that ''the laws of Maryland provide adequate authority to carry out the program submitted on May 9, 1995 by the Maryland Department of the Environment (the Department) to the U.S Environmental Protection Agency for approval to administer and enforce the operating permit program under Title V of the CAA and 40 CFR Part 70 (the Part 70 program).'' Section 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x) require that the program provide standing for judicial review of a permit action to THE PERMIT APPLICANT, any person who participated in the public comment process and any other person who could obtain judicial review of that action under applicable law. EPA interprets section 502(b)(6) of the CAA and part 70 as requiring that approvable state title V permits programs must provide judicial review to any party who participated in the public comment process and who meets the threshold requirements of Article III of the U.S. Constitution for standing in federal courts.

The Attorney General cites the Maryland Environmental Standing Act (MESA), Md. Nat. Res. Code Ann. §§ 1–501 to 1–508 (1990), as the primary avenue for third parties to obtain judicial review of the Department's issuance of a Part 70 permit. The Attorney General interprets MESA to provide standing to challenge permit issuance in actions for mandamus or equitable relief (including declaratory relief) to several categories of persons. Those categories are: (1) The state, (2) any political subdivision of the state, and (3) any other person, regardless of whether that person possesses a special interest different from that possessed generally by the residents of Maryland or whether substantial personal or property damage to that person is threatened. The Attorney General recognizes that MESA does not provide standing for a direct judicial review of permit actions under Maryland's Administrative Procedure Act (APA), Md. State Gov't Code Ann. § 10–201 (1990). Nonetheless, it appears that review of essentially equivalent scope as direct judicial review is available under MESA. The Attorney General notes that the Maryland Supreme Court has stated that an administrative proceeding such as permit issuance or denial, even if not subject to direct review under the APA, would be subject to judicial review of essentially the same scope in an action for mandamus or equitable relief (including certiorari, injunction, or declaratory judgment).

For purposes of MESA, the term ''person'' includes any resident of Maryland, any Maryland corporation, and any partnership, organization, association or legal entity doing business in the state. Parties not falling within this definition of ''person'' (for example, individuals living in an adjacent state but near a Maryland source, or an organization not doing business in Maryland) can not take advantage of the standing provisions of MESA. Instead, those parties are required to establish standing for judicial review under the Maryland common law of standing. Under Maryland common law, in order to establish standing, a party must demonstrate it has a ''specific interest or property right'' such that the party will suffer harm that is different in kind from that suffered by the general public. There are no reported cases in Maryland that would preclude a non-economic interest (such as a recreational, conservational or aesthetic interest) from constituting the type of specific interest needed for standing. If a Maryland judicial decision having precedential effect is issued in the future limiting the special interest required for standing to economic interests, then the Maryland standing requirements would become more stringent than Article III standing requirements. In that event, EPA will take appropriate action under 40 CFR 70.11(c).

With respect to organizations not doing business in Maryland, the Maryland standing requirements are somewhat less favorable than the standing requirements of Article III of the U.S. Constitution. The federal courts interpret Article III to provide standing for organizations in actions brought to protect the interests of its members, provided certain conditions are met. *See Chesapeake Bay Foundation* v. *Bethlehem Steel Corp.*, 608 F.Supp. 440 (D. Md. 1985). Under Maryland common law of standing, an organization must have an interest of its own, separate and distinct from that of its individual members, in order to establish standing. *Medical Waste Associates, Inc.* v. *Maryland Waste Coalition*, 327 Md. 596 (1992). However, the Maryland Attorney General notes that if at least one plaintiff in an action for review of a permit establishes standing, the Maryland courts will not ordinarily inquire as to whether other plaintiffs have standing. Therefore, an organization doing business outside of Maryland may be able to participate in a permit challenge on behalf of its individual members if other parties having the requisite standing also join as plaintiffs in the action. (Of course, organizations doing business in Maryland can establish standing under MESA, as discussed above.)

MESA must be amended to accord non-state residents and organizations not doing business in Maryland the same standing to challenge Part 70 permit decisions as other ''persons'' as defined in MESA, or, in the alternative, other appropriate legislative action must be taken to ensure that standing requirements for such organizations are not more restrictive than the minimum requirements of Article III of the U.S. Constitution as they apply to federal courts. A straightforward approach Maryland could take to resolving this issue would be to amend its state APA to directly provide for the opportunity for judicial review of permit actions in state court, consistent with CAA section 502(b)(6) and 40 CFR 70.4(b)(3)(x); this would avoid the risk of any future Maryland judicial decision interpreting MESA or Maryland's common law of standing potentially compromising Maryland's Part 70 approval status.

Section 70.5 Permit Applications

Maryland's regulations substantially meet the requirements of 40 CFR 70.5 for permit applications. The following changes must be made in order to fully meet the requirements of 40 CFR 70.5:

1. COMAR § 26.11.03.04 lists 17 types of emission units and activities that are exempt from being included in the Part 70 permit application. 40 CFR 70.5(c) allows EPA to approve a list of insignificant activities or emissions levels which need not be included in permit applications; however, the State must identify such emissions levels or

insignificant activities based on size, emission rate or production rate. Maryland must make three changes to COMAR § 26.11.03.04 in order to meet the requirements of 40 CFR 70.5(c):

a. As part of the list of emission units and activities exempt from the Part 70 permit application, COMAR § 26.11.03.04 A(18) lists ''any other emission unit that is not subject to an applicable requirement of the Clean Air Act.'' Part 70 does not allow such a broad exemption of emission units from the permit application requirements. 40 CFR 70.5(c)(3)(i) requires that a permit application describe all emissions of regulated air pollutants from any emissions unit, except where such units are exempted as part of a list of insignificant activities or emission levels. Insignificant activities or emissions levels must be clearly identified and established based on a justifiable limitation, such as a size or emissions threshold.

b. Maryland must revise COMAR § 26.11.03.04 B to provide that a permit applicant shall not omit information needed to determine the applicability of, or to impose, any applicable requirement, consistent with 40 CFR 70.5(c).

c. Maryland must revise COMAR § 26.11.03.04 A(2) to clarify the exemption for boilers used exclusively to operate steam engines for farm and domestic use. This exemption must be modified to impose a justifiable and objective emission limit, heat content limit, or size limitation to restrict this exemption to insignificant activities. Maryland must also provide enough information to identify the activity and/or unit qualifying for an exemption.

Section 70.7 Permit Issuance, Renewal, Reopenings, and Revisions

Maryland's regulations substantially meet the requirements of 40 CFR 70.7 for permit issuance, renewal, reopenings, and revisions. The following changes must be made in order to fully meet the requirements of 40 CFR 70.7:

1. COMAR § 26.11.03.21 A provides that general permits will be issued after notice and opportunity for public comment and hearing as required by the rule making provisions of the Administrative Procedure Act (APA), State Government Article § 10–101 et seq., Annotated Code of Maryland, and Environmental Article § 2–301, Annotated Code of Maryland. While the APA and § 2–301 and § 2–303 of the Environmental Article provide adequate public notice and comment provisions, they do not provide all necessary permit issuance procedures required by 40 CFR 70.7(h). COMAR § 26.11.03.21 A also states that any general permit shall comply with all requirements applicable to other Part 70 permits.

It is not clear, however, whether this provision applies to the issuance of general permits. Maryland's provisions for issuance of Part 70 permits (COMAR §§ 26.11.03.07–.09) are adequate, but the regulations do not specifically state whether they apply to general permits. Specifically, Maryland must require that the procedures for issuing general permits include notice and opportunity for participation by affected states consistent with 40 CFR 70.7(h)(3) and 70.8 (COMAR § 26.11.03.08) and a 45-day EPA review period, consistent with 70.8(a) and (c) (COMAR § 26.11.03.09). Further, Maryland must keep a record of public commenters and issues raised during the public participation process so that EPA may fulfill its obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted (COMAR § 26.11.03.07(G)). EPA recommends that Maryland clarify that these provisions apply to the issuance of general permits by citing in COMAR § 26.11.03.21 A the appropriate sections of Maryland's regulations.

2. The procedures for revising a general permit under COMAR §§ 26.11.03.21 J and L must be changed to meet the requirements of 40 CFR 70.7(e) regarding permit revision procedures. COMAR § 26.11.03.21 J allows the Department to revise or repeal a general permit using the procedures that are appropriate to the particular permit. COMAR § 26.11.03.21 L states that the revision procedures set forth in Maryland's regulations do not apply to a general permit, except as provided in the general permit. These sections are inconsistent with Part 70 because they give the Department discretion to determine the appropriate procedures that should be followed to revise a general permit. Under 40 CFR 70.7(e)(1), the permitting authority is required to provide procedures for permit modifications that provide a level of public participation and review by the permitting authority, EPA and affected states that is at least equal to that provided in Part 70. Therefore, if the Department proposes a significant change in the general permit's terms and conditions, such as a relaxation of reporting requirements or an increase in the applicable emissions limit, the general permit would need to be revised according to procedures for a significant permit modification, including a 30 day public comment period, an opportunity for a public hearing, and review by EPA and affected states. Those proposed revisions to the general permit that meet the criteria for administrative permit amendments or minor permit modifications could be processed using procedures consistent with 40 CFR 70.7(d) and § 70.7(e)(2), respectively. It should be made clear that the general permit cannot be modified for individual sources; rather, each source that applies for and is granted approval to operate under the general permit must adhere to the same permit terms and conditions. If the Department determines that a revision to the general permit is necessary, it must revise the permit using procedures consistent with 40 CFR 70.7, as described above.

3. Maryland's requirements for permit reopenings, including COMAR §§ 26.11.03.07 A(2), 26.11.03.08 A and 26.11.03.20 C (4), (5) and (6), provide the State discretion to follow procedures other than the procedures for permit issuance. Maryland's COMAR § 26.11.03.20 C(4) states that ''the procedures that the Department specifies to be followed if a permit is reopened shall be based on the Department's determination as to what type of change to the permitted source is likely to result from reopening the permit, using Regulations [26.11.03] .14–.17 [pertaining to permit revisions] of this chapter as guidance.'' By contrast, 40 CFR 70.7(f)(2) requires that procedures to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance. Maryland's provisions for permit reopening procedures are inconsistent with Part 70. However, future revisions to Part 70 may provide flexibility in the procedures that States must use to reopen permits. On August 31, 1995, EPA proposed revisions to Part 70 that would streamline the procedures for revising Title V operating permits. (See 60 FR 45530.)

4. COMAR § 26.11.03.17 F provides that a permittee shall submit an application for a significant permit modification not later than 12 months after commencing operation of the changed source unless the change is prohibited by the Part 70 permit. This provision is inconsistent with 40 CFR 70.7(e)(4), which does not allow a source to make a significant permit modification prior to receiving a revised permit from the permitting authority. A significant permit modification is a change that does not qualify as an administrative permit amendment or a minor permit modification. Significant modifications include relaxations in monitoring, reporting, or recordkeeping. By allowing a source to submit its permit application 12 months after making a change, COMAR § 26.11.03.17

F is less stringent than 40 CFR 70.7(e)(4) and allows a source even more leniency in making a significant change than for making minor permit modifications or administrative permit amendments. This is clearly not the intent of the significant permit modification provisions of 40 CFR 70.7(e)(4). Future revisions to Part 70, as described above, may provide flexibility in the procedures that States must use to process permit revisions.

5. COMAR § 26.11.03.14 C allows the Department to approve changes to compliance plans or schedules as part of an administrative permit amendment or minor permit modification. This provision is less stringent than 40 CFR 70.7 because the relaxation of a compliance plan or schedule is a significant change that should be processed as a significant permit modification. Future revisions to Part 70, as described above, may provide flexibility in the procedures that States must use to revise permits.

6. COMAR § 26.11.03.15 B(7) contains the following sentence: ''Notwithstanding § [26.11.03.15] B(1)–(6) [pertaining to administrative permit amendments] of this regulation, for purposes of the acid rain portion of a Part 70 permit is governed by regulations promulgated under Title IV of the Clean Air Act.'' This sentence apparently was written in error. EPA assumes that this sentence is meant to reflect the provisions of 40 CFR 70.7(e), which states that a permit modification (other than an administrative permit amendment) for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Clean Air Act. Maryland must correct the wording of COMAR § 26.11.03.15 B(7).

Section 70.8 Permit Review By EPA and Affected States

Maryland's regulations substantially meet the requirements of 40 CFR 70.8 for permit review by EPA and affected states. The following changes must be made in order to fully meet the requirements of 40 CFR 70.8:

1. COMAR § 26.11.03 appears to allow the Department to make changes in a final permit after EPA has completed its review of the permit. For example, COMAR § 26.11.03.11 includes provisions for implementing changes to a final permit subsequent to a contested case hearing and the issuance of a proposed decision by an Administrative Law Judge (ALJ). On the basis of past experience with other air quality control programs, Maryland believes that it will be an extremely rare occasion when an applicant seeks such a hearing. In the event that such proceeding does occur, COMAR § 26.11.03.11 affords EPA the opportunity to participate in the hearing. In the event that EPA does not participate, COMAR § 26.11.03.11 affords EPA a thirty (30) day opportunity to comment on the proposed decision of the ALJ prior to the Department's issuance of a final decision in the matter. However, in the event that the Department thereafter issues a final decision which modifies or changes conditions in the final permit, federal and state requirements (the Clean Air Act, 40 CFR 70.8 and COMAR § 26.11.03.09) should be read as requiring the Department to provide EPA with an additional (45 day) period in which to review and comment on the final permit. Maryland must revise its Attorney General's Opinion to acknowledge that in the event the Department implements changes to any final permit, EPA will have an additional (45 day) period to review and comment on the final permit, as revised by the Department.

B. Variances

Maryland Environmental Article sections 2–501, 606, 610(c), 611, and 613 are cited by the Department as variance provisions which authorize the Department to deviate from certain applicable requirements within and outside the permitting process. EPA has no authority to approve provisions of State law, such as the variance provisions referred to in these sections, which are inconsistent with the CAA. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable Part 70 permit, except where such relief is granted through procedures allowed by Part 70. EPA reserves the right to enforce the terms of the Part 70 permit where the permitting authority purports to grant relief from the duty to comply with a Part 70 permit in a manner inconsistent with Part 70 procedures.

C. Permit Fee Demonstration

COMAR § 26.11.02.19(A) states that owners or operators of Part 70 sources will be required to pay an annual fee consisting of a base fee of two hundred dollars ($200) plus an emissions-based fee for each ton of regulated emissions. Beginning in January 1, 1996, the fee rate will be twenty-five dollars per ton ($25) of regulated emissions. On January 1, 1997, this annual fee will be adjusted by the Consumer Price Index (CPI). Fee revenues received from Part 70 facilities will be placed in a segregated portion of the Department's Air and Radiation Management Administration budget. Surplus funds from any prior year of the program will be carried over to the following year to be used solely for Part 70 permitting activity.

Only program-related fees from facilities subject to Part 70 applicability will be used to fund the program. Maryland's fee calculation, based upon recent (September 1994) emissions inventory data, shows that revenues will be able to cover the estimated costs of the program. In chapter IV of the submittal entitled, ''Workload Analysis and Fee Demonstration'', Maryland estimates revenues and costs associated with the implementation of its operating permits program. The Air and Radiation Management Administration proposes an accounting method whereby Part 70 program activities performed by technical personnel in the Air Quality Permits and Compliance Program will be coded directly to specified Part 70 program cost accounts. In the submittal, Maryland stated that in the event of a temporary shortfall of revenues, the Department will have the option to prorate fees collected from facilities with Phase I units (acid rain) so as to allow fees from non-Phase I units at these sites to be used for Part 70 activities. According to 40 CFR 70.9(b)(3), the permitting authority is allowed to calculate fees on any particular basis or in the same manner for all Part 70 sources, or all regulated air pollutants, provided that the state collects a total amount of fees sufficient to meet the program. Maryland meets the requirements of 40 CFR 70.9(b)(3). However, it will be necessary for the State to demonstrate how these revenues will be prorated. EPA recommends that Maryland establish an account tracking system that will distinguish between revenues and expenditures attributable to Phase I from non-Phase I units. The estimates of revenues from the authorized collection of emission-based fees reveal that Maryland's program will have adequate funding to cover the direct and indirect costs of implementing the permit program during each of the first four years.

D. Provisions Implementing the Requirements of Title III Implementing Title III Standards Through Title V Permits

Maryland's regulations provide general authority to administer and enforce the requirements of the Clean Air Act regarding hazardous air pollutants, and thus generally meet the requirements of 40 CFR 70.3 (a)–(b). The following issue must be addressed in order to fully meet the requirements of 40 CFR 70.3 (a)–(b).

1. In its May 9, 1995 submittal, Maryland advised EPA that it was not seeking full Part 70 program approval regarding hazardous air pollutants, but was considering whether to request EPA approval of its existing air toxics program (COMAR § 26.11.15) under Subpart E of 40 CFR Part 63. As a result, the Attorney General did not review the State's Part 70 program regarding current federal requirements for hazardous air pollutants. Maryland must resolve the issue of how it will address the CAA's section 112 applicable requirements and revise its Attorney General's opinion to include a detailed review of the State's Part 70 program regarding current federal requirements for hazardous air pollutants.

Under Environment Article, Title 2, of the Annotated Code of Maryland and COMAR § 26.11.03.06 A(1), Maryland, in its Title V program submittal, has demonstrated broad legal authority to incorporate all applicable requirements into permits and to enforce its permit requirements. In its May 9, 1995 submittal, Maryland indicated that the Part 70 permits will be the mechanism to implement mandatory Section 112 requirements and that other federally-enforceable mechanisms may be used to carry out specific CAA section 112 activities but only if approved by EPA. EPA regards this commitment as an obligation to obtain further legal authority as needed to issue permits that assure compliance with the CAA's section 112 applicable requirements.

For a further discussion in support of this interpretation, please refer to the TSD accompanying this rulemaking, which is located in the public docket, and the April 13, 1993 guidance memorandum entitled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, USEPA.

Implementation of 112(g) Upon Program Approval

EPA is proposing to approve Maryland's operating permits program for the purpose of implementing CAA section 112(g) during the transition period between federal promulgation of a section 112(g) rule and Maryland's adoption of section 112(g) implementing regulations. Until recently, EPA had interpreted the CAA to require sources to comply with section 112(g) beginning on the date of approval of the Title V program regardless of whether EPA had completed its section 112(g) rulemaking. EPA has since revised this interpretation of the CAA as described in a February 14, 1995 Federal Register notice (see 60 FR 83333). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The rationale for the revised interpretation is set forth in detail in the February 14, 1995 interpretive notice.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Maryland must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of implementing Maryland regulations.

EPA believes that, although Maryland currently lacks a program designed specifically to implement section 112(g), Maryland's Title V operating permits program will serve as an adequate implementation vehicle during the transition period because the program will allow Maryland to select control measures that would meet Maximum Achievable Control Technology (MACT) on a case-by-case basis, as defined in section 112, and incorporate these measures into federally enforceable source-specific permits.

This proposed approval clarifies that Maryland's operating permits program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Maryland of rules established to implement section 112(g). EPA is proposing to limit the duration of this approval to an outer limit of 18 months following EPA's promulgation of the section 112(g) rule. Comment is solicited on whether 18 months is an appropriate period taking into consideration the State's procedures for adoption of regulations. However, since this proposed approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted.

Although section 112(l) generally provides the authority for approval of state air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V.

If Maryland does not wish to implement section 112(g) through the proposed mechanisms discussed above and can demonstrate that an alternative means of implementing section 112(g) exists during the transition period, EPA may, in the final action approving Maryland's Part 70 program, approve such alternative.

Program for Straight Delegation of Section 112 Standards

As previously noted, Maryland has advised EPA that it currently is not seeking full Part 70 program approval regarding hazardous air pollutants, but is considering a request for approval of its existing air toxics program (COMAR § 26.11.15) under Subpart E of 40 CFR Part 63. However, prior to receiving EPA approval of its existing air toxics program, Maryland must agree that the requirements specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for a program for delegation of unchanged section 112 standards. Section 112(l)(5) requires state programs to contain adequate authorities and resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Prior to a decision by EPA regarding approval of its existing air toxics program, EPA proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 of Maryland's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. For EPA-promulgated rules which are applicable to sources in the State, the State intends to request delegation after adopting the rules. The details of this delegation mechanism will be established prior to delegating any section 112 standards. This program applies to both existing and future standards but is limited to sources covered by the Part 70 program.

E. Title IV Provisions/Commitments

As part of the May 9, 1995 program submittal, Maryland committed to submit all missing portions of the Title IV acid rain program by November 15, 1995, including its State acid rain regulations.

III. Request for Public Comments

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in this federal rulemaking action by submitting written comments

to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to grant interim approval of the operating permits program submitted by Maryland on May 9, 1995, and the Attorney General's Legal Opinion submitted on June 9, 1995. The scope of Maryland's Part 70 program applies to all Part 70 sources (as defined in the program) within Maryland, except for sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the CAA as ''any community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25. 1994); 58 FR 54364 (Oct. 21, 1993). Prior to full approval by EPA, Maryland must make the following changes:

1. The Maryland Environmental Standing Act (MESA) must be amended to accord non-state residents and organizations not doing business in Maryland the same standing to challenge Part 70 permit decisions as other ''persons'' as defined in MESA, or, in the alternative, other appropriate legislative action must be taken to ensure that standing requirements for such organizations are not more restrictive than the minimum requirements of Article III of the U.S. Constitution as they apply to federal courts.

2. Revise the provisions for insignificant activities under COMAR § 26.11.03.04 as follows, to achieve consistency with the requirements of 40 CFR 70.5(c):

a. Remove the exemption for ''any other emission unit that is not subject to an applicable requirement of the Clean Air Act'' under COMAR § 26.11.03.04 A(18).

b. Revise COMAR § 26.11.03.04 B to provide that a permit applicant shall not omit information needed to determine the applicability of, or to impose, any applicable requirement.

c. Revise COMAR § 26.11.03.04 A(2) to add a justifiable limitation on the exemption for boilers used exclusively to operate steam engines for farm and domestic use.

3. Revise COMAR § 26.11.03.21 to clarify that the procedures for issuing general permits must include affected state and EPA review, and that the state must keep a record of the public commenters and issues raised during the public participation process, consistent with 40 CFR 70.7(h) and 70.8.

4. Revise COMAR §§ 26.11.03.21 J and L to require that general permits are revised according to procedures consistent with 40 CFR 70.7(e).

5. Revise COMAR §§ 26.11.03.07 A(2), 26.11.03.08 A, and 26.11.03.20 C (4), (5) and (6) to provide that the procedures for initial permit issuance also must be followed for permit reopenings, to achieve consistency with the requirements of 40 CFR 70.7(f)(2).

6. Remove subsection F of COMAR § 26.11.03.17, which impermissibly allows sources to submit a permit application within 12 months after making a significant permit modification.

7. Revise COMAR § 26.11.03.14 C to require that any relaxation of a compliance plan or schedule will be processed as a significant permit modification, consistent with 40 CFR 70.7(e)(4).

8. Revise the wording of COMAR § 26.11.03.15 B(7), pertaining to permit modifications for acid rain permits, consistent with 40 CFR 70.7(e).

9. Amend the Attorney General's Opinion to clarify that if the Department proposes to change a final permit as a result of a contested case decision by an Administrative Law Judge and pursuant to COMAR § 26.11.03.11, the Department will revoke the final permit and reissue it with the proposed changes so as to provide EPA with the (45 day) review and comment period required pursuant to the CAA, 40 CFR 70.8 and COMAR § 26.11.03.09.

10. Revise the Attorney General's Opinion to include a detailed review of the State's Part 70 program regarding current federal requirements for hazardous air pollutants.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, Maryland is protected from sanctions for failure to have a fully approved Title V, Part 70 program, and EPA is not obligated to promulgate a federal permits program in Maryland. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's section 112(l)(5) requirements for approval of a program for delegation of section 112 standards applicable to Part 70 sources as promulgated by EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, EPA is also proposing under section 112(l)(5) and 40 CFR 63.91 to grant approval of Maryland's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action to propose interim approval of Maryland's operating permits program pursuant to Title V of the CAA and 40 CFR Part 70 does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 20, 1995.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 95–26856 Filed 10–27–95; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 69

[CC Docket No. 95–115; DA 95–2197]

Subscribership and Usage of the Public Switched Network

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of Time.

SUMMARY: On July 20, 1995, the Commission released a Notice of Proposed Rulemaking (''Notice'') concerning rules and policies to increase subscribership and usage of the public switched network. The Commission invited comment on the proposals and tentative conclusions set forth in that Notice, and set deadlines of September 27, 1995, for initial comments and October 27, 1995, for